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101ST CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 101-110
Part 1

A BILL TO APPROVE THE DESIGNATION OF THE CORDELL BANK NATIONAL MARINE SANCTUARY, TO DISAPPROVE A TERM OF THAT DESIGNATION, AND TO PROHIBIT THE EXPLORATION FOR, OR THE DEVELOPMENT OR PRODUCTION OF, OIL, GAS, OR MINERALS IN ANY AREA OF THAT SANCTUARY

JUNE 23, 1989.—Ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.J. Res. 281]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred House Joint Resolution 281, having considered the same, report favorably thereon, with an amendment, and recommend that the bill, as amended, do pass.

The amendment is as follows:

On page 2, after line 18, add the following new subsection:

SEC. 3. ENVIRONMENTAL IMPACT STATEMENT REQUIREMENT.

(a) The Secretary of the Interior shall not approve any exploration plan, or any activities described in any exploration plan (including any application for a permit to drill), pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) in connection with a lease in effect on the date of enactment of this Act for block numbered 204, 246, 247, 290, 291, 334, 335, 378, 379, 422, 423, 466, 467, 510, 511, 553, 554, 555, 597, 598, 599, 640, 641, or 642 on protraction diagram NI 18-2 of the Universal Transverse Mercator Grid System, until a final Environmental Impact Statement is issued with respect to such exploration plan.

(b) The Secretary of the Interior shall, pursuant to section 5(a)(1) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(a)(1)), suspend operations under a lease in effect on the date of enactment of this Act on any block referred to in subsection (a), and extend any lease affected by such suspension, for the period between—

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(1) the submission of an exploration plan pertaining to such block; or

(2) the date of enactment of this Act, whichever occurs later, and the issuance of a final Environmental Impact Statement as required under subsection (a).

PURPOSE OF THE RESOLUTION

The purpose of this resolution is to approve the designation of the Cordell Bank National Marine Sanctuary, as described in a notice of designation published in the Federal Register on May 24, 1989. The resolution also prohibits development of oil, gas, or minerals within the marine sanctuary and requires that the Secretary of Commerce promulgate regulations implementing this prohibition.

The resolution also contains provisions relating to areas offshore North Carolina. The Secretary of the Interior may not approve a plan of exploration under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) for certain OCS lease tracts until a final Environmental Impact Statement has been completed.

BACKGROUND AND NEED FOR LEGISLATION

Cordell Bank National Marine Sanctuary

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431–1437) (MPRSA) authorizes the Secretary of Commerce to designate discrete areas of the marine environment subject to United States jurisdiction as National Marine Sanctuaries. The purpose of a designation is to promote comprehensive management of the conservation, recreational, ecological, historical, research, educational, or esthetic values of an area. The National Oceanic and Atmospheric Administration (NOAA) manages the program through the Marine and Estuarine Management Division in the Office of Ocean and Coastal Resource Management.

The National Marine Sanctuary Program (NMSP) consists currently of seven designated sites. Cordell Bank would be the eighth site. Ten additional sites are under active consideration for future designation. See Figure 1.

Figure 1

Cordell Bank is a seamount located on the edge of the continental shelf, 20 miles due west of Point Reyes, California. The Bank itself is roughly ellipitical, is within the 50 fathom isobath, and covers about 18.14 square nautical miles. The proposed boundary for the sanctuary would encompass the Bank and a large buffer zone, constituting an entire protected area of 397.05 square nautical miles. See Figure 2.

FIGURE 2

Regional Context

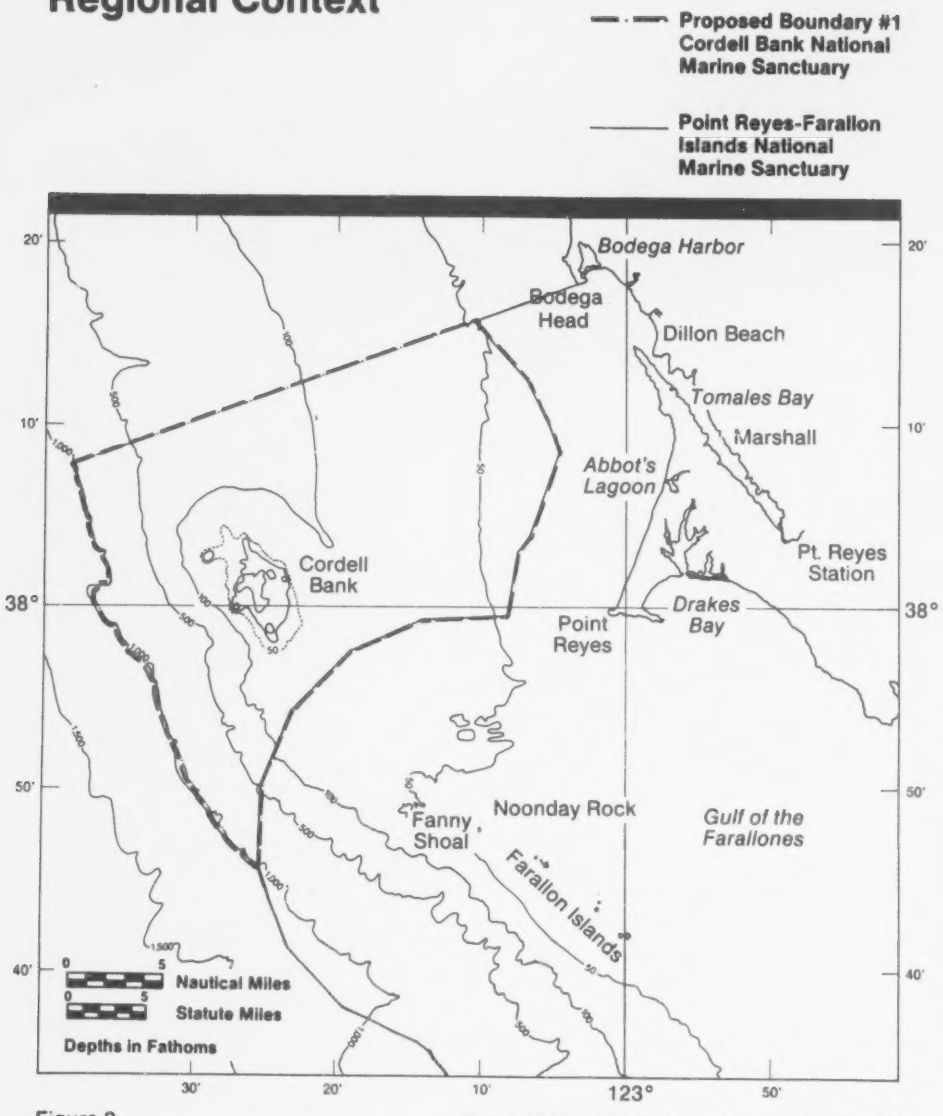

Figure 2

Source: National Ocean Service Nautical Chart 18640.

Cordell Bank is characterized by a combination of oceanic and topographic conditions that support a highly productive environment in a well-defined area. The summit of the Cordell Bank seamount rises to within 115 feet of the sea surface; the base is under 6000 feet of water. The upwelling of nutrient-rich, deep-ocean water supports a rich and varied ecosystem. The shallower bottom areas are abundant with invertebrate species including sponges and corals. Fish species are varied and abundant, and 14 species of marine mammals are known to frequent the waters of Cordell Bank. The waters around the Bank are a rich feeding ground for seabirds.

NOAA has been considering the designation of Cordell Bank since 1981. Delay in completing the process of designation for Cordell Bank was a primary factor in recent amendments to title III of the MPRSA (P.L. 100–627). Those amendments directed the Secretary of Commerce to designate four new sanctuaries: Cordell Bank, offshore California; Flower Garden Banks, offshore Texas; Monterey Bay, offshore California; and Western Washington Outer Coast, offshore Washington.

Cordell Bank is clearly a prime candidate for marine sanctuary status. Testimony before the Committee during the 100th Congress (Serial No. 100–58) supported this conclusion and led to the directive in Public Law 100–627 that the sanctuary be designated by December 31, 1988.

While testimony urged the Committee to establish a ban on oil and gas development within Cordell Bank, the Committee initially deferred this issue to NOAA. On May 19, 1989, the Secretary of Commerce signed the notice of designation for Cordell Bank. The notice was published in the Federal Register on May 24, 1989.

The designation is self-executing and will become final, after a Congressional review period of 45 days of continuous session, unless Congress disapproves the designation of any of its terms. It is estimated that the designation will become final on or around July 28.

The notice of designation provides that oil and gas development will be prohibited only within the 18.14 square mile area of the Bank itself. It provides that oil and gas activities within other parts of the sanctuary "*may* be regulated" (emphasis added). However, the notice also states that—

> Listing of an activity authorizes but does not require its regulation. Therefore, the listing of an activity does not imply that the activity will be regulated in the future.

The Committee prefers to ensure that the entire area of the Cordell Bank Marine Sanctuary be given full protection from the risks inherent in oil and gas development. To leave the question of oil and gas regulation open-ended will simply cause conflict and uncertainty among environmental and industry interests.

The Committee recognizes that NOAA published, also on May 24, a proposed regulation which, if promulgated, would institute a prohibition on oil and gas activities within the entire sanctuary.

Nonetheless, the record of the agency in protecting Cordell Bank leaves much to be desired. As earlier noted, consideration of this site began in 1981 but languished. Even after the Congress enacted

a statutory directive for this designation, the agency did not comply. Public Law 100-627 required a notice of designation on December 31, 1988. NOAA failed to meet this deadline and, instead, published a notice that the designation would be issued by March 31, 1989. This date was also missed and it was not until May 24, 1989 that the required designation was published. NOAA's performance has been hamstrung by inadequate funding; nevertheless, this record does not inspire confidence.

The agency itself has left open the possibility that the proposed rule may be withdrawn. In a letter to Chairman Walter B. Jones dated June 20, 1989 (see below, Departmental Reports) NOAA states—

> If the rulemaking record does not support the proposed ban *causing us to modify the proposed rule or withdraw it,* the Congress still would have the option to take legislative action imposing a ban (emphasis added).

Again, the Committee prefers to act in favor of certainty. To prolong consideration of this matter seems fruitless. NOAA's proposed rule finds that the sanctuary is of "special environmental sensitivity" and that hydrocarbon activities "could threaten Sanctuary resources". In its comments supplied after the Final Environmental Impact Statement on the Cordell Bank proposal was issued, the Environmental Protection Agency (EPA) has also urged a ban on oil and gas activity:

> Such A [Prohibition] would make the management of this sanctuary consistent with the contiguous [Gulf of the Farallones] Sanctuary and, more importantly, reduce the risk of damage from potential oil spills.

Oil and gas activities are also prohibited within the Channel Islands National Marine Sanctuary, offshore southern California although no such ban exists for the majority of sanctuaries. In a nation which leads the world in energy consumption and relies on imported oil for nearly one-half of its supplies, and off the coast of a State that is a leading energy consumer, such decisions cannot be made lightly. However, in the case of Cordell Bank, the Committee has decided it is prudent to "Just Say No".

Nor does the Committee take lightly this intrusion into the administrative process. However, this type of legislative action was envisioned in 1984 when the MPRSA was amended to allow for Congressional review and approval or disapproval of marine sanctuary designations. This is the first designation to be considered by NOAA since 1984 and the first time the Committee has exercised this overriding legislative authority.

Although there are currently no OCS leaseholds within the sanctuary, oil and gas development is not a phantom issue for the Cordell Bank sanctuary. It lies within the Central California Planning Area under the 5-year OCS leasing program. Lease Sale #119

is scheduled for this area in March, 1991. While the Department of the Interior has deferred leasing within the 50 meter isobath, nearly one-half of the total sanctuary has been included in the initial sale area. (See Figure 3). Again, although no oil and gas development is imminent, the Committee believes that leaving the question of oil and gas regulation open-ended sends ambiguous signals to the oil and gas industry.

FIGURE 3

Potential Oil and Gas Development Near Cordell Bank

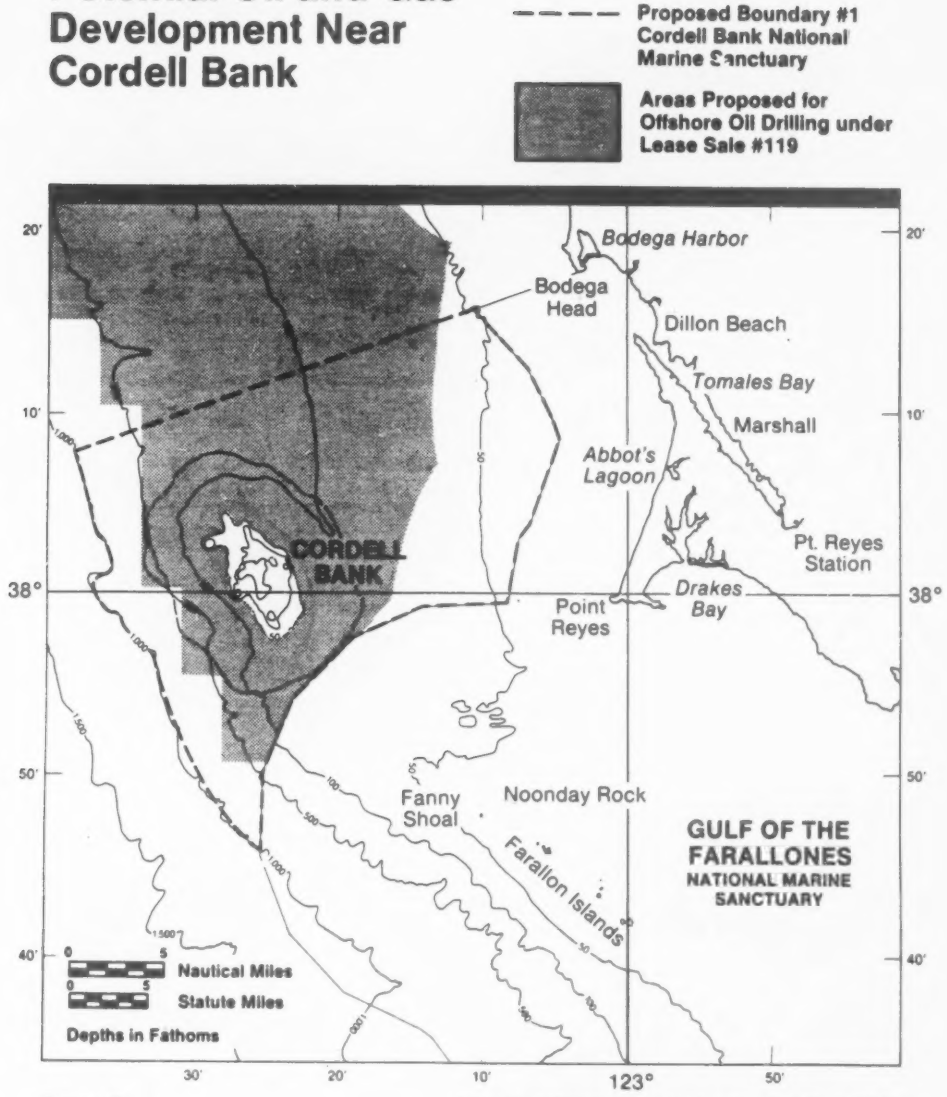

Figure 3

Sources: National Ocean Service Nautical Chart 18640; Department of the Interior, OCS Oil and Gas 5 Year Plan, 1987.

The question of hard-rock mineral development is also not addressed squarely in the notice of designation. This resolution would add mineral development to the list of prohibited activities.

Finally, while the Committee certainly supports due process and thorough consideration of regulatory options, it is likely to be wasteful of the agency's scarce resources to spend further time and taxpayer dollars in this case. The agency intends to prepare a supplemental Environmental Impact Statement (SEIS) on the proposed regulatory ban. This will entail substantial dedication of staff resources and expensive public hearings. NOAA has other matters which require its attention and expertise, including the designation of three additional sanctuaries mandated in Public Law 100–627.

Environmental impact statement requirement

On September 7, 1988, the Mobil Oil Company announced that it would submit a plan of exploration (POE) on September 15th, to explore for natural gas on an outer Continental Shelf (OCS) tract approximately forty-seven miles offshore Cape Hatteras, North Carolina. Mobil bought the lease at the Department of the Interior's (DOI) South Atlantic OCS sale #56 held on August 4, 1981.

Shortly after this announcement, Mobil postponed plans to submit the POE citing "technical difficulties" in working out a unitization agreement with a number of other companies that had purchased leases in the same offshore area. Mobil is still working on the unitization agreement with its partners and indicates that it will submit the POE to DOI's Minerials Management Service (MMS) sometime later this summer (1989).

Mobil and its partners (Amerada Hess, Chevron, Conoco, Marathon, Occidental, Shell, and Union) may comprise the Manteo Exploration Unit if a unitization agreement is reached. An "exploration unit" is a means by which a group of companies can jointly explore their leases in a common area. Each participating company pays a share of the exploration cost which, in most cases, is for a wildcat well.

The proposed Manteo unit is made up of twenty one leased blocks, each a little under nine square miles in size, located in the Middle and South Atlantic OCS planning areas. Most of the tracts were leased at the 1981 sale but one was purchased in OCS Re-Sale #2 on August 5, 1982 and several more were bought at South Atlantic OCS sale #78 held on July 26, 1983. Those leases purchased at sale #56 are scheduled to expire on August 31, 1991; the lease purchased at Re-Sale #2 will expire on August 31, 1992; and those purchased at sale #78 will expire on August 31, 1993.

The State of North Carolina has consistently maintained that MMS should prepare an environmental impact statement (EIS) prior to approving Mobil's exploration plan. The State asserts that the EIS's prepared for Lease Sales #56 and #78 are inadequate in certain respects. The level of scientific information for these ocean areas has increased dramatically since 1983. According to the State, the information shows unquestionably that the prior analyses were based on flawed data and assumptions. Direct and indirect onshore impacts from a discovery the size Mobil is projecting were never sufficiently analyzed. Consequently, the State is asking that a complete EIS be prepared on the Mobil proposal.

The MMS disagrees with North Carolina arguing that an EIS is not prepared on an exploration plan because of statutory impossibility—the Outer Continental Shelf Land Act (OCSLA) requires approval or denial of the plan within thirty days after submittal, thus affording insufficient time to prepare an EIS.

Specifically, under DOI regulations, the MMS regional supervisor must, within thirty days after submission of a plan, either: "(1) approve the plan; (2) requires the lessees to modify any plan which is inconsistent with the provisions of the lease, the Act [OCSLA], or the regulations prescribed under the Act including air quality environmental, safety, and health requirements; or (3) disapprove the plan if the regional supervisor determines that a proposed activity would probably cause serious harm or damage to life, property etc. . . . ." [30 CFR 250.33(i).]

The Department has also been reluctant to prepare an EIS on the Mobil plan because of its concern about the precedent that such a step might establish. According to MMS, no environmental impact statements have ever been prepared on OCS exploratory plans although they are routinely prepared for production and development plans.

Numerous meetings among the parties involved have occurred this spring. Chairman Walter B. Jones has met with the Director of MMS, officials from Mobil, and had conversations with North Carolina Governor Jim Martin. The Minerals Management Service, the Mobil Oil Corporation, and the State of North Carolina have all been involved in various levels of negotiations to reach some accommodation on the information necessary to be provided to the State before the Secretary of the Interior considers approving the POE. Notwithstanding the efforts of all the parties concerned, an impasse persists.

To resolve this impasse, section 3 of H.J. Res. 28, provides that a final EIS is required for any or all existing leases on 24 enumerated OCS blocks offshore of North Carolina before the Secretary of the Interior may approve a POE for the leases. The amendment also direct the Secretary to suspend a lease on any of these blocks for the period between the submission of a POE, or the date of enactment of this Act (whichever occurs later) and the issuance of a final EIS.

COMMITTEE ACTION

On May 19, 1989, the Secretary of Commerce signed the notice of designation for the Cordell Bank National Marine Sanctuary. This designation was published on May 24, 1989. On May 23, 1989, Mr. Bosco, Mrs. Boxer, and Ms. Pelosi introduced H.J. Res. 281 which was referred to the Committee on Merchant Marine and Fisheries. Within the Committee, H.J. Res. 281 was referred jointly to the Subcommittee on Oceanography and the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

No hearings were held on this resolution. However, during the 100th Congress, the Committee heard testimony on the subject of Cordell Bank during the consideration of H.R. 4208, a bill to reauthorize and amend the National Marine Sanctuaries Program. This testimony included information on the appropriateness of the area

for marine sanctuary status, as well as the need for a ban on oil and gas activities within the proposed sanctuary.

On June 21, 1989, the Committee on Merchant Marine and Fisheries met to markup pending legislation. Chairman Jones moved that the Committee consider H.J. Res. 281. Unanimous consent motions were made to discharge the Subcommittees of jurisdiction from further consideration and the Committee proceeded to consider the resolution. Chairman Jones offered an amendment to add a new section 3. The Chairman's amendment would prohibit the Secretary of the Interior from approving an exploration plan for any of 24 lease tracts offshore North Carolina until environmental impact statements were issued with respect to the plan or plans. The amendment was adopted by voice vote. No other amendments were offered and the resolution was ordered reported from Committee by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1 of H.J. Res. 281 approves the Cordell Bank National Marine Sanctuary designation, signed by the Secretary of Commerce on May 19, 1989 but disapproves one term of the designation. Article 4, section 1.c. of the designation provides for the possible regulation of oil and gas activities within the sanctuary. This term is disapproved. This process of Congressional consideration and action is envisioned by Title III of the MPRSA. H.J. Res. 281 represents the first time this prerogative has been exercised by Congress.

Section 2 provides that, notwithstanding any other law, exploration for, or development or production of oil, gas, or minerals in any area of the sanctuary is prohibited. This section also requires the Secretary of Commerce to revise the regulations implementing this statutory prohibition within 120 days of enactment.

The Committee intends that section 2(a) of H.J. Res. 281 will place an immediate ban on any activity related to the exploration or development of oil, gas, or minerals within the sanctuary. Section 2(b) is intended as a directive to the Secretary of Commerce to implement the ban by amending the regulations governing this site. This subsection does not provide the Secretary any discretion with regard to a prohibition and is intended simply as a directive to promulgate conforming regulations. Since the Secretary is afforded no discretion on this matter, the Committee intends that the normal notice and comment rulemaking procedures will be waived. In addition, no EIS or environmental assessment is necessary. The Committee expects the Secretary to proceed directly with issuance of a final rule within 120 days of enactment.

Section 3(a) of H.J. Res. 281 provides that a final EIS be required for any or all existing leases on 24 enumerated blocks off the coast of North Carolina before the Secretary of the Interior may approve a POE for the leases. The amendment covers the 21 OCS lease tracts making up the proposed Manteo Exploration Unit, plus three additional tracts that are adjacent to the original unit. It affects only those blocks specified and only existing leases on those blocks. If any of the leases expire without the submission of a POE, future leases on such blocks purchased at a subsequent lease sale

are not affected by the amendment. If POE's are submitted within the terms of the existing leases, however, EIS's will be required. If multiple blocks, even all 24 blocks, are included in a unitization agreement for which a single POE is submitted, then only one final EIS for that POE will be required.

The Committee expects the Department of the Interior to prepare an EIS that complies with all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the accompanying implementing regulations.

Section 3(b) directs the Secretary to suspend a lease on any of these blocks for the period between the submission of a POE or the date of enactment of this Act, whichever occurs later, and the issuance of a final EIS. The Interior Department routinely suspends leases when Congress enacts directives that affect rights held under existing leases. Consequently, subsection (b) simply makes certain that MMS will provide for a suspension of the lease term covering the time required to prepare and publish the draft and final EIS's. Such a suspension will be granted to each and every leaseholder submitting a POE on these blocks, thus effectively extending the term of their leases.

The amendment offers a strong incentive to the respective oil companies to reach an agreement on unitizing their operations to preserve the leases beyond their original expiration date. By unitizing and submitting a POE on the entire field for which an environmental impact statement is required, a single exploration well suffices to preserve the rights of all the other tracts contained in the unitization agreement. At the same time, a unitization agreement will require the broadest possible POE and, thus, under the terms of the amendment, the most comprehensive and complete environmental impact statement.

The amendment is designed to protect the interests of all the parties involved. It will serve to reassure the State of North Carolina and the residents of eastern North Carolina that the environmental consequences of any natural gas exploratory activity will be thoroughly reviewed, considered, and made public by requiring a complete FIS process. It will also protect the rights of the leaseholders by suspending the expiration date on their leases so that they will be able to proceed with exploration once the final FIS is completed, State concurrence achieved, and Secretarial approval obtained. Finally, the amendment will assist the Interior Department in achieving one of its key missions, the exploration of outer Continental Shelf resources in an environmentally balanced manner.

The Committee notes that section 3 is specific to the blocks enumerated. It is not intended that this section affect OCS activity in other areas, nor that it require EIS's on exploration plans for other OCS leases.

COST OF THE LEGISLATION

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee estimates the total cost of this legislation to the Federal Government is $500,000. The Committee ac-

cepts the estimates of the Congressional Budget Office for outlays included in this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to Clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.J. Res. 281 would have no significant inflationary impact on the economy.

COMPLIANCE WITH CLAUSE 2(l)(3) OF RULE XI

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives:

(A) The Subcommittee on Oceanography and the Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on reauthorization of the National Marine Sanctuaries Program on April 19, 1988. These hearings included testimony on the proposed Cordell Bank National Marine Sanctuary, including the need for a ban on oil and gas activity.

(B) The Committee on Merchant Marine and Fisheries has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at pursuant to clause 4(c)(2) of rule X of the Rules of the House of Representatives.

(C) The Director of the Congressional Budget Office has furnished the Committee with a report fulfilling the requirements of section 308(a) of the Congressional Budget Act of 1974 and an estimate and comparison of cost of H.J. Res. 281 pursuant to section 403 of the Congressional Budget Act of 1974. The report reads as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 23, 1989.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.J. Res. 281, a joint resolution to approve the designation of the Cordell Bank National Marine Sanctuary, to disapprove a term of that designation, and to prohibit the exploration for, or the development or production of, oil, gas, or minerals in any area of that sanctuary, as ordered reported by the House Committee on Merchant Marine and Fisheries on June 21, 1989. CBO estimates that implementation of this resolution would cost about $500,000 over fiscal years 1989 and 1990.

H.J. Res. 281 would prohibit the Secretary of the Interior from approving any exploration plan, in connection with oil and gas leases for 24 blocks of the federal Outer Continental Shelf off the coast of North Carolina, until he issues a final environmental impact statement (EIS) for the plan. This would necessitate the preparation of an EIS upon submission of an exploration plan for the specified area. Based on information from the Minerals Management Service, CBO estimates that it would cost $500,000 to pre-

pare the EIS. Other provisions in the resolution are not expected to affect the federal budget.

Enactment of this resolution would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is James Hearn, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

DEPARTMENTAL REPORTS

The Committee on Merchant Marine and Fisheries received an unfavorable report from the Department of Commerce on June 20, 1989. No other reports have been received on H.J. Res. 281.

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, DC, June 20, 1989.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Department of Commerce has reviewed H.J. Res. 281, which would: (1) approve the designation by the Under Secretary of Commerce for Oceans and Atmosphere of the Cordell Bank and its surrounding waters offshore northern California encompassing 397.05 square nautical miles as a National Marine Sanctuary; (2) disapprove a term of that designation which would allow the Under Secretary to regulate hydrocarbon (oil and gas) activities within the Sanctuary up to and including a complete regulatory ban on all such activities within the Sanctuary; (3) prohibit oil, gas and mineral exploration, development, and production within the Sanctuary; and (4) require the Secretary of Commerce to issue regulations, within 120 days of enactment, to implement the prohibition.

On May 24, 1989, the Department of Commerce published proposed regulations in the Federal Register which would amend the regulations governing activities in the Sanctuary to ban all oil and gas activities within the entire Sanctuary. These regulations already prohibit all oil and gas activities within the core area of the Sanctuary (approximately 18 square nautical miles of the total 397.05 square nautical mile area). Both the existing prohibition and the expanded proposed prohibition were issued under the authority provided by the very term of the designation that H.J. Res. 281 would disapprove.

The rulemaking process initiated by the May 24, 1989, notice of proposed rulemaking will involve preparation of an environmental impact statement (EIS), an opportunity for all concerned to submit written comments on the proposed rule and the EIS, a public hearing, and an extensive review of the testimony and comments received.

We believe the designation should be permitted to take effect through self-execution and the rulemaking should be allowed to run its course. The rulemaking provisions of title III of the Marine

Protection, Research and Sanctuaries Act provide for full public participation to ensure that all interests are considered. If the rulemaking record does not support the proposed ban causing us to modify the proposed rule or withdraw it, the Congress still would have the option to take legislative action imposing a ban. Moreover, no oil and gas leasing or other activity will occur in the Sanctuary during the time frame of the rulemaking process.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

WENDELL L. WILLKIE, II,
General Counsel.

CHANGES IN EXISTING LAW

H.J. Res. 281 makes no changes in existing law.

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